

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 8, “Investigations and Disciplinary Procedures,” and Chapter 11, “Continuing Education,” Iowa Administrative Code.

The adopted amendments are intended to incorporate the aggravating and mitigating factors included in the Appraisal Foundation’s Voluntary Disciplinary Action Matrix into rule 193F—8.15(272C,543D), to broaden the rule to apply to the Board’s consideration of all types of disciplinary sanctions, rather than the current focus on the imposition of civil penalties, and to add factors that the Board has historically considered but that are not adequately reflected in the current rule. The amendments will also allow a respondent to have such information within a file that will allow the respondent an opportunity to have education but still preserve the anonymity of the complainant or the peer reviewer in the process.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 11, 2012, as **ARC 0209C**. No public comment was received on these amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the Board on September 25, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 543D, and 546.

These amendments shall become effective December 5, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 193F—8.7(272C,543D) as follows:

193F—8.7(272C,543D,546) Confidentiality of complaint and investigative information.

8.7(1) All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code subsection 272C.6(4). Such information shall not be released to any person except as provided in that section and in this rule.

8.7(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 546.10(9), the board may, prior to the initiation of a disciplinary proceeding, supply to a licensee who is the subject of a disciplinary complaint or investigation all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant’s identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant’s willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release to a licensee information that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee but prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review report or investigative report or with expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board’s receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may disclose information from a peer review report or consultant’s report when soliciting the licensee’s position will aid in making the probable cause determination or when providing

the information would be educational to the licensee, and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

ITEM 2. Rescind rule 193F—8.15(543D) and adopt the following **new** rule in lieu thereof:

193F—8.15(272C,543D) Mitigating and aggravating factors. Factors the board may consider when determining whether to impose discipline and what type of discipline to impose include:

8.15(1) History and background of respondent.

- a. Whether the respondent was a registered associate appraiser or a certified appraiser at the time of the violation.
- b. Prior disciplinary history or cautionary letters.
- c. Length of certification or registration at the time of the violation.
- d. Disciplinary history of current or prior supervisor.
- e. Degree of cooperation with investigation.
- f. Extent of self-initiated reform or remedial action after the date of the violation.
- g. Whether the volume or geographic range of the respondent's practice is, or was at the time of the violation, reasonable under the circumstances.
- h. Whether the respondent practiced with a lapsed, inactive, suspended, revoked, or surrendered certificate or registration.

8.15(2) Nature of violation.

- a. Length of time since the date of the violation.
- b. Whether the violation is isolated or recurring.
- c. Whether there are multiple violations or appraisals involved.
- d. Whether the violation is in the nature of an error or situational carelessness or neglect, or reflects a more fundamental lack of familiarity with applicable appraisal methodology or standards.
- e. Indicia of bad faith, false statements, deceptive practices, or willful and intentional acts, whether within the circumstances of the violation or in the course of the board's investigation or disciplinary proceeding.
- f. Evidence of improper advocacy or other violation of the USPAP ethics rule or of Iowa Code section 543D.18 or 543D.18A(1).
- g. The clarity of the issue or standard involved.
- h. Whether the respondent practiced outside the scope of practice authorized by respondent's certification or registration.
- i. Whether the violation relates to the respondent's supervisory role, the respondent's individual appraisal practice, or both.

8.15(3) Interest of the public.

- a. Degree of financial or other harm to a client, consumer, lending institution, or others.
- b. Risk of harm, whether or not the violation caused actual harm.
- c. Economic or other benefit gained by respondent or by others as a result of the violation.
- d. Deterrent impact of discipline.
- e. Whether the respondent issued a corrected appraisal report when warranted.

ITEM 3. Amend paragraph **11.2(1)“b”** as follows:

- b. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases the appraiser's skill, knowledge and competency in real estate appraising. Credit may be granted for educational offerings that are consistent with the purpose of continuing education. A minimum of 14 21 of the required 28 credit hours must involve courses that address one or more of the following subject areas: real estate appraisal law and rules, report writing, cost approach, sales approach, income approach, economic principles, legal considerations in appraisal, real estate markets

and analysis, highest and best use analysis, appraisal math and statistics, site value, valuation of partial interests or appraisal ethics.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.